

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Kerrie Romanow

SUBJECT: SEE BELOW

DATE: February 4, 2013

Approved



Date

2/12/13

SUBJECT: PHASE-OUT OF EXPANDED POLYSTYRENE FOAM FOOD WARE

RECOMMENDATION

- (a) Accept the staff report providing additional information and analysis on actions to reduce expanded polystyrene foam food ware in San José; and
- (b) Direct staff to schedule a Public Hearing this summer to approve and adopt the Phase-Out of Expanded Polystyrene Foam Food Ware Ordinance

OUTCOME

Staff will continue preparations to adopt an ordinance to phase out Expanded Polystyrene (EPS) foam food service ware used by San José restaurants and food vendors in a manner that balances environmental benefit with economic impact on food vendors. Staff will conduct outreach that supports ordinance implementation and ensures a smooth transition for San José restaurants. The result of these efforts will be a reduction in a persistent form of litter – EPS – that has detrimental affects on water quality, is harming fish and wildlife in local and global marine ecosystems, and is a visual blight on roadways and in neighborhoods.

BACKGROUND

At the December 2012 Transportation and Environment Committee, staff presented a report (attached) on the Bring Your Own Bag (BYOB) Ordinance Implementation Results and Actions to Reduce EPS Foam Food Ware. The report described the success of the BYOB Ordinance and included observed reductions in single-use plastic bags of approximately 89 percent in the local storm drain system, 60 percent in our creeks and rivers, and 59 percent in City streets and neighborhoods. As requested by Council, the report also discussed options for reducing EPS foam food ware litter citywide and presented the key findings of a study on the economic impacts to restaurants that could result from a phase-out of EPS foam food ware. Per Council Member Rocha and Council Member Liccardo's memo, staff was directed to return to Council in February.

ANALYSIS

Environmental Benefits

EPS foam food ware, as well as single-use plastic shopping bags, comprise significant portions of the trash found in the City's storm sewer system. Because of this prevalence and their unique physical makeup, these items present a uniquely problematic concern. Furthermore, both of these items have viable and commonly used alternatives that are generally considered more environmentally friendly and whose distribution can be locally controlled; this does not hold true for other forms of single use packaging, such as snack food packaging. Therefore, addressing these two specific litter sources are beneficial first steps in reducing trash in the community.

The ordinance will result in significant environmental benefits by eliminating a litter source that has persistent detrimental effects in waterways and is a visual blight. Like single-use plastic bags, EPS foam is a distinctive litter concern. EPS foam is lightweight, floats, and readily travels from land to inland waterways and out to the ocean. EPS foam easily breaks into small pieces that are commonly mistaken for food by birds and other marine wildlife. The report, *Plastic Debris in the California Marine Ecosystem*, (http://calost.org/pdf/science-initiatives/marine%20debris/Plastic%20Report_10-4-11.pdf), commissioned by the Ocean Protection Council, points out that, "Plastic debris places a variety of marine species including turtles, fish, seabirds, mammals, and invertebrates at risk of ingestion and/or entanglement. Entanglement and ingestion can result in a range of documented impacts including lacerations, drowning, limited feeding, digestive ulcers, and starvation, limited predator avoidance, and reduced reproductive output." Due to these negative wildlife and water quality impacts, plastic debris such as EPS has become a priority concern to citizens, municipalities, and water quality regulators.

The ubiquity of EPS litter and the difficulty cleaning it up have been documented in multiple studies that assess the health of San José creeks. According to a 2012 study conducted by the Bay Area Stormwater Management Agencies Association (BASMAA), in San José and other jurisdictions, preliminary data showed EPS foam to comprise approximately 7.8 percent of the trash in the storm sewer system. As part of that study, a device was installed in the storm sewer system to capture trash from a 200-acre area in central San José; this was cleaned out after six months of operation. Data showed that approximately 10.8 percent of the trash in that unit was found to be EPS foam. This finding is consistent with a 2001 Caltrans study, (<http://www.dot.ca.gov/hq/env/stormwater/pdf/CTSW-RT-00-013.pdf>), that found 15 percent of the total trash in storm drains by volume was EPS. A 2011 study of beach debris conducted by Save Our Shores in Santa Cruz County found that before the imposition of a ban in that county, EPS comprised 12.7 percent by count of all trash found on county beaches.

Outreach Efforts - Survey

In meeting the direction of the T&E Committee to conduct outreach, in mid-January staff visited approximately 500 local restaurants throughout San José and were able to speak with and survey owners or managers at 188 of these restaurants. The survey asked for feedback on the proposed EPS phase-out ordinance. The key questions and findings included:

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- What types of containers do you currently use: 77 percent use EPS foam, 32 percent use rigid plastic, 29 percent use paper, and 7 percent use compostable (reflects use of multiple types).
- Reasons for selecting a type of container: 40 percent cited least cost, 49 percent cited performance, and some cited convenience and environmental concerns.
- Would switching to non-EPS products have a financial impact on your business: 44 percent said yes; 16 percent said no.
- If yes to a financial impact, what is the degree of impact: 23 percent characterized it as slight, 27 percent would pass it on to their customers, 6 percent thought it may cause them to consider reducing staff, and 6 percent said it may cause them to go out of business.
- What actions could the City take to support a transition to non-EPS containers: provide information on acceptable alternative products and suppliers, offer financial assistance, lower prices on alternative products, educate the public, and allow adequate time to identify the right alternative products.

Individual Stakeholder Outreach

Staff also met with various restaurant and business associations to solicit their specific feedback on the parameters of a potential EPS phase-out ordinance. This included meeting representatives from the Hispanic Chamber of Commerce, the San José/Silicon Valley Chamber of Commerce, Story Road Business Association, the Downtown Business Association, the Japantown Business Association, and the California Restaurant Association. A generalized summary of the feedback from these meetings is that there is broad recognition that EPS litter does have significant impacts on the environment; and that any effort to regulate EPS at restaurants should be sensitive to the vulnerability of small, independently owned businesses.

WaterBoard

Trash in waterways has become a priority concern to the public, municipalities, and water quality regulators. Several local waterways have been formally listed as "impaired by trash" under the Federal Clean Water Act, including Silver Creek, Coyote Creek, Saratoga Creek, San Tomas Aquino Creek, the Guadalupe River, and the lower San Francisco Bay shoreline.

Water quality regulators regard stormwater as the largest uncontrolled source of pollutants to creeks and the Bay, with trash emerging as a critical pollutant impacting waterways. The Water Board initiated more stringent regulation of trash: All stormwater dischargers in the Bay Area, including the City, must reduce trash loading to the storm sewer system by 40 percent by 2014, 70 percent by 2017, and 100 percent by 2022. As required, the City submitted a Short Term Trash Load Reduction Plan in February 2012 which documented how the City intends to meet the 2014 trash reduction goal.

San José has made significant efforts to reduce trash and litter in neighborhoods and local waterways; our trash reduction actions are estimated to meet and potentially exceed the Stormwater Permit's 40 percent trash reduction goal by 2014. However, the Water Board has not yet formally accepted the City's Short Term Trash Load Reduction Plan and the regional methodologies and tools to locate problematic areas of trash and quantify baseline trash levels.

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At issue is how cities can demonstrate that the implemented trash reduction actions are indeed reducing trash in the waterways. Because litter and trash travel through the cityscape and into waterways from multiple sources and through many different pathways, attributing and measuring trash reduction of a specific action or set of actions is challenging and the resources needed to do so may render such an undertaking impractical.

Staff from multiple cities and the Water Board have been meeting for the past several months and are working to develop an agreeable approach to assessing trash reduction. The group has agreed to make a determination by March on how to frame the Long Term Trash Load Reduction Plans which are due to the Water Board by February 1, 2014. These long term plans will describe each city's strategy to meet the 2017 goal to reduce trash by 70 percent and the 2022 goal to reduce trash by 100 percent.

Recommended Features of the Ordinance

Based on feedback from San José restaurant operators and industry groups as well as findings of studies that have been conducted to date, staff developed a draft EPS phase-out ordinance in a manner that seeks to minimize business impacts and ease the transition for small businesses. Facets of the draft ordinance (attached) include:

- *Up to one-year lead time* – As done with the BYOB Ordinance, restaurants would be given up to one year for the transition. The survey found that most restaurants could use up their current stock of EPS foam food service ware in less than three months. A year provides ample time to prepare, identify and research best pricing for alternatives.
- *Phased implementation with national chain restaurants first* – With the premise of larger chain restaurants being able to more easily adapt to the change, the ordinance applies in the first year to national (i.e. locations in more than one state) chain restaurants and expands to all other restaurants in the second year. This phased approach gives smaller restaurants an additional year to prepare for and comply with the ordinance. It's possible that with the national chains going first and with other regional EPS ordinances in play, increasing demand for alternative products will help drive lower prices by the time smaller restaurants need to comply. Environmental Services staff worked with the Office of Economic Development to utilize information provided by stakeholders to refine the definition of chain and other restaurants that would ease implementation and enforcement.
- *No prescriptive alternative* – The ordinance does not prescribe a replacement product, allowing restaurants greater flexibility to choose alternatives that best meets their needs.
- *Exemptions* – The ordinance would allow restaurants to apply for exemptions based on the lack of available suitable alternative products or on the basis of financial hardship.

Recommended Outreach

Staff will identify outreach and education strategies to support a clear understanding of the new ordinance. Elements of this outreach plan will include:

- *Vendor Fair* – Staff will bring in vendors of alternative products so local restaurants can learn about the range of materials available.

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- *Business Association Outreach* – Working with local business associations, staff will provide education and outreach at membership meetings or venues.
- *Mailers* – To ensure information reaches every restaurant and food vendor, staff will plan for mailings that announce the ordinance in advance and necessary information.
- *Ongoing announcements and information distribution* – Staff will develop factsheets and other collateral to ensure restaurants are fully informed in advance and assisted through the transition. Such information will distribute through the City's website, an ordinance hotline, in-person staff presentations, and other distribution methods.

Staff will continue to engage other opportunities to more broadly raise awareness by restaurants and the general public alike regarding the issue of litter impacts on the environment, the value of reducing the use of problematic packaging products, proper disposal, and volunteer neighborhood clean-ups. At this time, there are two regional initiatives that the City can leverage:

- *Taking Out the Trash Project* – Specifically aimed at food service establishments, this grant from the US EPA Region 9 Water Quality Improvement Fund project reflects a partnership with Clean Water Action and the cities of San Francisco, Oakland, and San José. The project will work with local businesses to develop specific best management practices intended to reduce the amount of litter from restaurants. The project will emphasize reusable cups, elimination of foam plastic and other single-use packaging that is associated with take-out food. Case studies will be developed that can help expand this project past the grant term. The project will commence its outreach to businesses in Spring 2013 and continue for the next two years.
- *Be the Street Litter Campaign* – The Bay Area Stormwater Management Agencies Association is currently implementing a three-year social media campaign to change the littering behaviors of Bay Area youth. The campaign, known as Be the Street, recently completed an anti-litter video contest and received over 50 video submittals (visit bethestreet.org to view the videos). The winning video will run as a public service announcement throughout the Bay Area, and campaign activities will continue for the next two years.

If Council approves moving forward with an ordinance, staff will initiate the environmental review process and work with Santa Clara County staff to expand this review countywide. Staff from other cities has indicated that a Countywide CEQA process will significantly help facilitate adoption of similar ordinances in other cities. County staff is prepared to develop a Memorandum of Agreement with staff to reimburse the City for the additional costs of expanding the scope of the review countywide.

EVALUATION AND FOLLOW UP

If directed by Council, return no later than summer 2013 to present a final ordinance for approval and adoption at a Public Hearing.

PUBLIC OUTREACH

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

While this item does not meet any of the criteria, this memorandum will be posted on the City's website for the City Council agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the Office of Economic Development.

CEQA

Not a Project, File No. PP 10-069 (a), Informational Memos that do not involve approvals of any City actions.

/s/
KERRIE ROMANOW
Director, Environmental Services

For questions, please contact Napp Fukuda, Deputy Director, Environmental Services, at (408) 793-5353.

Attachments